

**MINUTES OF THE REGULAR MEETING OF
THE ELOY CITY COUNCIL
CITY OF ELOY
595 NORTH C STREET
FEBRUARY 8, 2021
6:00 P.M.**

Staff Present: Harvey Krauss-City Manager; Stephen R. Cooper-City Attorney; Mary Myers-City Clerk; Jillian Childress-Management Assistant; Christopher Vasquez-Police Chief; Jon Vlaming-Community Development Director; Keith Brown-Public Works Director/City Engineer; Brian Wright-Finance Director; Paul Anchondo-Community Services Director

I. CALL TO ORDER

Mayor Micah Powell called the meeting to order at approximately 6:00 p.m.

II. ROLL CALL

Council Members Present: Councilmember Sara Curtis; Vice Mayor Andrew Rodriguez; Mayor Micah Powell; Councilmember Dan Snyder; Councilmember Jose Garcia; Councilmember Sylvia Guanajuato Rodriguez

Council Members Absent: Councilmember George Reuter

III. INVOCATION

Pastor Debbie Miller gave the invocation.

IV. PLEDGE OF ALLEGIANCE

Councilmember Dan Snyder led the Council and the public in the Pledge of Allegiance.

V. PUBLIC APPEARANCES

A. Scheduled

None

B. Unscheduled

The following residents voiced their opposition to the proposed revisions to the city's marijuana ordinance:

- Pastor Ken Blondeaux
- Mr. Conrad Tolson
- Mr. Robert Guerrero

The individuals who spoke were all concerned about:

- The proposed distance between recreational marijuana facilities and schools (100 feet to 150 feet);
- Violation of state statute as it pertains to designating a 300 foot perimeter around schools as a drug free zone;
- Establishing businesses that are within walking distance -that are not family friendly.

They asked the Council keep the setbacks for recreational marijuana the same as medical marijuana (1320 feet) that is currently on the book.

VI. REPORTS AND ANNOUNCEMENTS

A. Council Members' Announcements

1. Councilmember Guanajuato Rodriguez announced that the Pinal Gila Council for Senior Citizens agency has a program called "Bridges of Care" that provides 30 days of in-home support for seniors 60 years of age or older and disabled adults 18 years of age or older. Participants must reside in Pinal or Gila counties and personally impacted by COVID-19.

Councilmember Guanajuato Rodriguez recognized and thanked police dispatcher, Dana Jackson for doing a great job of keeping her calm during a 911 call she made over the weekend.

2. Councilmember Curtis relayed announcements from Councilmember Reuter who could not attend tonight's meeting.

Councilmember Reuter made a post on social media about illegal dumping and received feedback from the public. Someone recommended having a dumpster in Toltec and Eloy for residents with limited vehicle access to dump. There was also an inquiry about dumping tires. Residents want to know where they go to dump old tires if the city landfill does not accept them. Councilmember Reuter also received a number of pictures from the public of illegal dumping in various areas of the city. He wants to know if the public could send photos of the illegal dumping to city staff to post on social media, and post when the city act on the

cleanup. Councilmember Reuter would like all of this to be posted in the same place.

3. Vice Mayor Rodriguez conveyed that Mr. Krauss, Mayor Powell and he, met with the new Pinal County Board of Supervisor for District 1 today. He expressed to the supervisor the need for Eloy to have a vaccination site. Vice Mayor Rodriguez said that Mr. Krauss is working with SunLife to obtain the vaccine to administer to local residents.

B. Mayor's Announcements

1. Mayor Powell updated the Council and public on the number of COVID-19 cases and deaths in Pinal County and Eloy. He said there has been a total of 2,896 cases reported in Eloy and a total of 37 deaths; Pinal County reported a total of 43,947 cases and 662 deaths. The total number of COVID tests taken in Pinal County is 239,739, and as of today, there were 122 new cases with no reported deaths (deaths that occurred over the weekend are not reported until Tuesday). Mayor Powell said most of the deaths are from the 20 to 44 age group. He said Pinal County received 10,000 vaccine doses that would be distributed to vaccine sites around the county.
2. As stated earlier by Vice Mayor Rodriguez, Mayor Powell said that Vice Mayor Rodriguez, Mr. Krauss and he met with District One supervisor, Kevin Cavanaugh. They discussed city issues and goals and how Eloy can move forward with his assistance.
3. Proclamation – Black History Month
Mayor Powell asked the city clerk to read a proclamation celebrating February as “Black History Month.” After the reading, Mayor Powell read the names of African Americans from Eloy (past and present) who made contributions in education, politics, sports, and community activism in the city.

Mayor Powell recognized former mayor, Mr. Byron Jackson, who was in the audience. He pointed out that Mr. Jackson was first black mayor elected in Eloy. Mayor Powell asked Mr. Jackson to come forward to say a few words in honor of Black History Month.

Mr. Jackson applauded the city for its history of diversity in the community. He talked about the need for Arizona leaders to acknowledge and recognize the many contributions and talents African Americans have made in the community and state.

C. City Manager's Announcements

1. Quarterly Financial Report – Ending December 31, 2020

2. A work session is scheduled for February 16, at 6:00 p.m., for a presentation from Mr. Schwann on options for the Dust Bowl Theater.
3. City offices will be closed February 15 in observance of President's Day.

VII. CONSENT AGENDA

Councilmember Snyder requested item C removed from the Consent Agenda.

- A. Approval of Minutes: 1/25/2021 (regular)
- B. Authorization for the purchase and installation of playground equipment and fiber surfacing from Miracle Recreation Equipment Company at Fire Station Park in an amount not to exceed \$39,000.
- C. ~~Authorization for the purchase and installation of new LED ballfield lighting in an amount not to exceed \$275,000 from Musco Sports Lighting, LLC at Shumway Park.~~
(Removed for discussion)
- D. Bid award and contract with Visus Engineering Construction to reconstruct Battaglia Road from Sunshine Boulevard to La Palma Road in the amount of \$462,000 plus a 10% owner's contingency of \$46,000, for a total expenditure amount not to exceed \$508,000.
- E. Approve a contract with Rick Engineering for Construction Phase Services for the reconstruction of Battaglia Road from Sunshine Boulevard to La Palma Road in the amount of \$35,000 plus a 10% owner's contingency of \$3,500 for a total expenditure of \$38,500.
- F. Approve a Development Agreement with Pilot Xpress Arizona LLC for the Maintenance of the Drainage Facilities at Xpress Fuel Center on Toltec Road.

Motion by Councilmember Garcia, seconded by Vice Mayor Rodriguez to remove item C from the Consent Agenda and approve the remaining Consent Agenda items as presented, passed unanimously by roll call vote.

E. AUTHORIZATION FOR THE PURCHASE AND INSTALLATION OF NEW LED BALLFIELD LIGHTING IN AN AMOUNT NOT TO EXCEED \$275,000 FROM MUSCO SPORTS LIGHTING, LLC AT SHUMWAY PARK.

Staff Cover Sheet Report: *Council approve the replacement of the existing permanent ball field lighting system at Shumway Park with a new LED Light Structure System from Musco Sports Lighting, LLC in an amount not to exceed \$275,000.*

The Shumway Park ballfield light system has been in use for over thirty years, and is in need of replacing. The current metal halide light system is outdated, inefficient, and current light levels have diminished over time. The project site serves the

Community Services Department's co-ed t-ball and coach pitch league, and is home to the community's "Legit" softball club. The ballfield is typically in use three to four times a week from the hours of 6PM to 8PM serving youth ages 5 to 17 years of age.

The proposed project will use new lighting technology that will provide several key benefits including: Guaranteed light levels of 50 foot candles (infield) and 30 foot candles (outfield) to meet Little League standards, greater light balance and control on the field, a significant reduction in the amount of light spill and glare into the adjacent neighborhoods; potential savings in the ongoing energy costs needed to operate the lights and a long term warranty of 25 years for ongoing operations and maintenance.

Musco Sports Lighting, LLC is widely recognized as the leader in the sports lighting industry focused on the design and manufacture of sports and transportation/infrastructure lighting systems working with cities and schools throughout the United States and across the globe.

Funding for the replacement of the Shumway Park ballfield light system was approved by City Council during the 2019/2020 budget process and is available in the 2020/2021 capital improvement plan budget. The purchase can be made through the 1 Government Procurement Alliance (1GPA), contract #18-23DP-01. The 1GPA purchasing cooperative allows public entities to take advantage of existing contracts to purchase the goods and services needed from local and national vendors.

1GPA Contracts are approved and awarded by 1GPA's lead governmental entities and are available for use and benefit of all entities complying with their own state procurement laws and regulations. All contracts are competitively bid and awarded in compliance with state statutes, procurement laws and regulations.

FISCAL IMPACT: *Funds for the Shumway ball field lighting system were approved by City Council, and are available through the City's FY2020/2021 Capital Improvement budget in the amount of two hundred seventy five dollars (\$275,000). The estimated cost for the purchase and installation of the Light Structure System is not to exceed \$275,000. The Finance Director concurs with this recommendation.*

Councilmember Snyder conveyed that he requested the item removed from the consent agenda so the public can get a better understanding of ballfield lighting.

Mr. Anchondo introduced Mr. John Abney from Musco Sports Lighting, who provided the Council and the public with a brief overview of the type of lighting system that would be installed at the ballfield. Mr. Abney brought in an actual lighting fixture to show the Council and the public. He said the lights would be dark-sky friendly.

There being no questions from the Council, Mayor Powell called for a motion.

Motion by Councilmember Snyder, seconded by Councilmember Curtis to authorize the purchase and installation of new LED ballfield lighting in an amount not to exceed \$275,000 from Musco Sports Lighting, LLC at Shumway Park, passed unanimously by roll call vote.

VIII. BUSINESS

A. PUBLIC HEARING ON PROPOSED ANNEXATION CASE # A2020-033, TO CONSIDER AND DISCUSS ADDING APPROXIMATELY 4.467 ACRES OF LAND INTO THE CORPORATE LIMITS OF ELOY, GENERALLY LOCATED NORTH OF ACOMA AVENUE AND EAST OF ELEVEN MILE CORNER ROAD.

Staff Cover Sheet Report: *Council to conduct a Public Hearing on a proposed annexation of 4.467 acres of land, generally located north of Acoma Avenue and east of Eleven Mile Corner Road in Section 18 of T. 7 S., R. 8 E., of the Gila & Salt River Base and Meridian (a portion of Pinal County Parcel Number 401-51-009B).*

Annexation is the process by which a city may assume jurisdiction of unincorporated territory adjacent to its incorporated boundaries. As such, annexation represents a significant step in the overall growth of a city. In Arizona, annexation requires the consent of the owners of at least one-half of the value of the real and personal property and the consent of more than one-half of the number of property owners in the territory to be annexed as documented by the latest county assessor data. In addition, the consent and action of the City Council are required.

The portion of the parcel to be annexed currently has a shade structure located on it. The Eloy General Plan shows the Estate Density Residential (0.2-1.0 du/ac) land use designation for this property.

The existing County zoning of the area is General Rural (GR), providing one dwelling unit per 1.25 acres of land. If the City Council adopts the annexation ordinance, the zoning will translate to 4.467 acres of Estate Residential (R1-54) in the City of Eloy.

The proposed area to be annexed meets State requirements that govern annexation. The territory to be annexed adjoins the boundary of the City of Eloy for at least 300 feet; the size and shape of the parcel to be annexed is a minimum of 200 feet in width at all points; the length is not more than twice the width of the annexed territory; and the annexation would not result in the creation of a county island.

Before the petition can be circulated, there is a thirty-day waiting period after filing the blank petition and corresponding map and legal description with the Pinal

County Recorder. Staff filed the initial blank petition on January 12, 2021 (Pinal County Recorder's Fee No.: 2021-003605).

FISCAL IMPACT: *The processing of this annexation required the City to pay noticing and filing costs totaling less than \$500. It also required staff time to support these efforts. The City will include this area in their police patrol territory, but it should not incrementally increase labor or operational costs. On the revenue side, the City will receive property taxes on the 4.467 acres of land.*

Mayor Powell declared a public hearing open.

Mr. Vlaming presented the Council and the public with a PowerPoint presentation on the proposed request to annex approximately 4.467 acres into the city. Mr. Vlaming conveyed that the request meets all of the conditions according to Arizona Revised Statutes.

Mayor Powell wanted to know if the staff reached out to other property owners in the area as well about annexing into the city.

Mr. Vlaming said the property owner reached out to other property owners, but was the only one who wanted to move forward.

Mayor Powell opened the floor to the public to allow questions and comments.

There being no questions or comments from the Council and the public, Mayor Powell declared the public hearing closed.

B. ADOPTION OF RESOLUTION NO. 21-1498 DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED "ORDINANCE NO. 21-904" INCORPORATING REVISIONS TO THE ELOY CITY CODE PERTAINING TO PORTIONS OF SECTIONS 13-28,13-28.1,13-28.2, 21-2-3.3, 21-2-5.3 21-3-1.33 AND 21-9-1 WHICH ADDRESS RECREATIONAL MARIJUANA USE AND FACILITIES.

Staff Cover Sheet Report: *Council adopt Resolution No. 21-1498 declaring as a public record that certain document filed with the City Clerk and entitled "Ordinance No. 21-904 " incorporating revisions to the Eloy City Code pertaining to portions of Sections 13-28,13-28.1,13-28.2, 21-2-3.3, 21-2-5.3 21-3-1.33 and 21-9-1 which address recreational marijuana use and facilities.*

The purpose of this resolution is to adopt the ordinance by title only in order to avoid the costs of publishing the entire ordinance, text exhibits and maps. This action is part of the approval of Ordinance No. 21-904 amending the Eloy City Code to address the use and facilities for recreational marijuana.

FISCAL IMPACT: *Adoption of this ordinance by title only will reduce the City's publication costs.*

Mr. Vlaming conveyed approving the resolution would adopt Ordinance No. 21-904 as a public record.

Councilmember Snyder asked if the Council adopts the resolution then decide to change the ordinance later, would it affect the resolution.

Mr. Cooper conveyed that the purpose of the resolution is to declare the ordinance as a whole a public record. If the ordinance is not declared a public record, the ordinance in its entirety would be required to be published in the newspaper, which can be very costly. Mr. Cooper further explained that making a public record of the document itself and if Council considers approving the ordinance and amendments are made to it, Council would approve the ordinance as amended. He said doing this would not affect the Council making the ordinance a public record.

Motion by Councilmember Garcia, seconded by Vice Mayor Rodriguez to read Resolution No. 21-1498 by title only, passed unanimously.

The city clerk read the resolution title into the record.

Mayor Powell called for a motion.

Motion by Councilmember Garcia, seconded by Vice Mayor Rodriguez to adopt Resolution No. 21-1498, passed unanimously by roll call vote.

C. ADOPTION OF ORDINANCE NO.: 21-904, APPROVING REVISIONS TO THE ELOY CITY CODE PERTAINING TO PORTIONS OF SECTIONS 13-28,13-28.1, 13-28.2, 21-2-3.3, 21-2-5.3, 21-3-1.33 AND 21-9-1 WHICH ADDRESS RECREATIONAL MARIJUANA USE AND FACILITIES.

Staff Cover Sheet Report: *Council adopt Ordinance No. 21-904 approving revisions to the Eloy City Code pertaining to portions of Sections 13-28,13-28.1, 13-28.2, 21-2-3.3, 21-2-5.3,21-3-1.33 and 21-9-1 which address recreational marijuana use and facilities.*

Proposition 207, the Safe and Smart Arizona Act, was passed by Arizona voters on November 3, 2020. The Act allows for the sale and consumption of recreational marijuana, and it allows communities to address areas of concern with recreational marijuana.

General Issues

- *Individuals that are 21 years and older can grow no more than six marijuana plants in their house provided the plants cannot be viewed by the public and are in a lockable area.*
- *The AZ Department of Health Services will be developing rules and regulations not addressed in Prop. 207.*
- *Prop. 207 does not allow the smoking of marijuana in a public place or open space, or the consumption of marijuana products while operating a vehicle.*
- *An employer can impose a prohibition on its employees use of recreational marijuana and marijuana products.*
- *It is still a felony under Federal statutes to possess and use marijuana.*
- *According to Federal law, anyone using or possessing marijuana is prohibited from possessing or owning a firearm.*

Issues Related to the Zoning Ordinance

The Act allows proposed recreational marijuana establishments to apply for a license from the Arizona Department of Health Services (DHS). Marijuana establishments include all of the following: retail, cultivation and manufacturing of marijuana products. This is a major change from the medical marijuana laws that allowed the city to create separate regulations for dispensaries, cultivation and infusion of medical marijuana.

The Act places restrictions on how localities, which are defined as Cities, Towns or Counties, can regulate marijuana establishments. The text of the Act states:

“A locality may not enact any ordinance, regulation or rule that: is more restrictive than a comparable ordinance, regulation or rule that applies to nonprofit medical marijuana dispensaries.”

The City must regulate all recreational marijuana establishments with an ordinance that is not more restrictive than our current regulation of medical marijuana dispensaries. However, we are allowed to be more permissive.

The current ordinance requires that all medical marijuana dispensaries have a Conditional Use Permit (CUP). Property owners are only allowed to apply for a CUP in the following zoning districts:

- *General Commercial District (C-2)*
- *Business Park (BP)*
- *Light Industrial (I-1)*
- *General Industrial (I-2)*

The current ordinance also specifies that medical marijuana dispensaries shall not be located within 1,320 feet of: the same type of use, residentially zoned property, a preschool, kindergarten, elementary, secondary or high school, place of worship, public park, or public community center.

Staff initially proposed that the City regulations for recreational marijuana establishments mirror the rules for medical marijuana dispensaries.

City Council Feedback

The City Council held a work session on December 7, 2020 and raised the following issues:

- *Open to allowing Marijuana Establishments to locate in more places than Code allows medical marijuana dispensaries*
- *Discussed allowing Establishments on Main and Frontier Streets and in Toltec*
- *1320' separation was too large*
- *Maintain some separation from schools and homes*
- *Not as concerned about distancing from churches and residentially zoned vacant land*
- *Control with Conditional Use Permits*

The City Council held a second work session on January 11, 2021 and raised the following issue:

- *1320' separation was too large for High Schools, and there should be no direct view of Marijuana Establishments from High Schools*

Draft City Code: General Regulations

There are enforcement issues that are not covered under the Act. There are no regulations for consuming marijuana on city property. There are prohibitions on smoking marijuana in public places and open spaces, but no mention of the other ways it can be consumed. To address these issues, staff recommends that the following sections be added to the City Code, Chapter 13: Offenses and Miscellaneous Law Enforcement Provisions.

13-28: MARIJUANA:

13-28.1: DEFINITIONS:

CONSUME MARIJUANA, MARIJUANA, OPEN SPACE, PUBLIC PLACE (Please see attached ordinance for definitions)

13-28.2: CONSUMPTION OF MARIJUANA:

- 1. The consumption of marijuana on City owned property, in a public place or open space is prohibited.*
- 2. Penalty Imposed: Any person found guilty of violating any provisions of this code, except as otherwise provided in this code, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a period not to exceed*

3. *six (6) months, or by both such fine and imprisonment. Each day that a violation continues shall be a separate offense punishable as hereinabove described.*

Draft City Code: Zoning Ordinance

Conditional Use Permit

Staff is recommending that Marijuana Establishments cannot operate without a Conditional Use Permit. The Act mandates that properties with the following zoning be allowed to apply:

- *General Commercial District (C-2)*
- *Business Park (BP)*
- *Light Industrial (I-1)*
- *General Industrial (I-2)*

Staff is also recommending that property owners with Neighborhood Commercial District (C-1) zoning be allowed to apply. Most of the C-1 zoning in the City is in Downtown along Frontier Street. Allowing these property owners to apply will meet the Council's goal of opening up Frontier Street to this use.

Minimum Separation Requirements

Based on the feedback from the City Council, Staff is recommending the following minimum separations from Marijuana Establishments:

- *Residences: 25 feet from building to building*
- *Preschool, kindergarten, elementary or secondary school, public park, or public community center: 100 feet from building to building*
- *High School: 150 ft. from property line to property line*

Planning and Zoning Commission Recommendation

The Planning and Zoning Commission held a public hearing on January 20, 2021. The owner of the land that Eloy's medical marijuana growing facility is located wondered if facilities that process marijuana should be located in places with dense development or where homes are in close proximity. Butane is used in some marijuana processing and the butane has led to explosions, such as the one in Coolidge a few years ago.

The draft ordinance requires an applicant to provide a site plan and a floor plan of the proposed establishment. This information will allow the City Council to determine if processing will take place in the establishment. The Council can cite health, safety or welfare to deny an application for processing in places with dense development or where homes are in close proximity. Conditional Use Permits are approved contingent upon the submitted site and floor plans. If an applicant changes from retail to processing, the Council can hold a hearing to revoke the Use Permit.

The Planning and Zoning Commission recommended approval of the draft ordinance, by a vote of 4 to 1, with Commissioner Peterson voting no. He wanted regulations on recreational marijuana to reflect the Ordinance for medical marijuana.

Ordinance Text Modification

In preparing a map of the allowed Marijuana Establishments locations, staff discovered that the Ordinance language could be modified to prevent questions in the future. The proposed modification is underlined below:

Shall not be located on a property where any portion of the property is within one hundred fifty feet (150') of a high school. This distance shall be measured in a straight line from the closest property line where the business is conducted, or proposed to be conducted to the closest property line of the high school.

FISCAL IMPACT: *If a retail marijuana establishment is located in Eloy, the City will be able to collect regular sales tax on sales to consumers. The City will also receive its portion of state shared transaction privilege tax. The Act does not allow the City to impose a separate excise tax on recreational marijuana products.*

Mr. Vlaming presented a PowerPoint presentation to the Council on the proposed recreational marijuana ordinance. Mr. Vlaming briefly reviewed the revisions that were derived from Council's comments at two work sessions; December 7, 2020 and January 11, 2021. He also identified areas in the city designated for this type of business.

Mr. Vlaming said with information about the 300 foot perimeter around schools coming forward tonight, he said he would like to take a closer look at the statute and confer with Mr. Cooper.

Mayor Powell wanted to know if the statute would apply since marijuana is no longer classified as a drug.

Councilmember Garcia pointed out that at one point cigarettes were included in the statute.

Mr. Cooper conveyed that there is no case law that has been interpreted as of yet. He pointed out that one of the protections the Council has is that this would be a conditional use. Part of the application process would be this issue that would be addressed; what affect the drug free zone would have on medical marijuana and does it trump the recreational marijuana statute. When a statute is interpreted, it usually carries over a general statute. Mr. Cooper said at this time, no one can give a definitive answer to this question, but rather something to address during the conditional use process to ensure the city is not violating any state law.

For clarification purposes, Vice Mayor Rodriguez asked Mr. Cooper that a conditional use permit can only be issued if the Council approves it.

Mr. Cooper told Vice Mayor Rodriguez that this is correct.

Mr. Vlaming added that in addition to obtaining Council approval, the conditional use permit comes with a number of conditions based on extenuating circumstances - location, surroundings, business type (i.e. grow, retail or manufacture). He said any of the three carries different kinds of parameters, notwithstanding any potential health and safety issues.

Vice Mayor Rodriguez asked if the applicant is not approved for a site, can the applicant choose another site that would meet with Council approval.

Mr. Vlaming said yes. There is also a legal process as well. If the applicant does not like the decision of the Council, there is a legal process the applicant can pursue.

Mr. Krauss conveyed that the setbacks Mr. Vlaming talked about in the ordinance are minimum setbacks. This does not preclude the Council on a site by site basis to increase the setback. Mr. Krauss said if there is a drug free zone that the Council wants to abide by, the setback can be increased.

Mr. Vlaming said this would probably be one of the conditions brought forward by staff.

Councilmember Snyder said he looked at recreational marijuana laws in Washington State, Oregon, Colorado and Michigan. He said these states implemented a larger distance (1000 feet) from schools and recreational areas. Councilmember Snyder said these states were treating requests as variances as opposed to conditional use permits.

Mr. Vlaming conveyed that a variance is used when the physical characteristics of the site does not allow the intended zoning or use. He said the development regulations are being varied because there are conditions that are not imposed by the city, but by the site. Mr. Vlaming stated a conditional use is different. The site itself can maintain the use, but the use of the site is what can cause concern, depending on the adjacency of other sensitive uses or the processes that will occur on the site. He said there is some difference in terms of what are the constraints offered by the site versus what are the constraints offered by the use proposed for the site.

Mr. Krauss conveyed that variances have a unique definition. There are four specific criteria that have to be met and it is the Board of Adjustment who would grant a variance. He said the Board of Adjustment can vary the setback, but believes that it would subject the city to some liability. Mr. Krauss said the conditional use permit is more legislative; and a variance is more semi-judicial. The Board of Adjustment

serves as semi-judicial body that would grant a variance because the applicant cannot meet the strict standards of the zoning ordinance. Conditional use permits are more guidelines and standards, but the Council has the prerogative to make those standards flexible to meet the particular needs of the site and conditions in the neighborhood. Mr. Krauss recommends that the city use a conditional use permit for more flexibility.

Mr. Cooper added that from a legal standpoint, a variance goes to the Board of Adjustment and the board decides the only avenue of appeal is to the superior court. He said if it is a variance, the Council will lose control. Under conditional use the Council can legislate it.

Councilmember Garcia conveyed that in light of new information, he recommends tabling the item until the staff can research the state statute pertaining to drug free zones around schools. He wants to make sure the city's ordinance is aligned with state law.

Mayor Powell pointed out that the Circle K located across the street from the high school sells alcohol and is less than 150 feet from the school. He said alcohol is legal, but prohibited in a drug free zone.

Councilmember Garcia pointed out that the Circle K was grandfathered in.

Mayor Powell asked Mr. Cooper if the Council could approve the ordinance citing the 300 foot perimeter around schools.

Councilmember Garcia said he would like his motion to table to stand. He said there are other aspects of the drug free zone such as bus stops and other areas for public buildings in the zone. The city needs to make sure that it is all aligned to the state law.

Vice Mayor Rodriguez reminded the Council that applicants would be required to obtain approval from the Council for issuance of a conditional use permit. He said if the Council does not want an applicant to open a marijuana business in a certain location in the city, the request can be denied and the applicant can find another location for Council consideration. Vice Mayor Rodriguez said the Council has been working on the marijuana ordinance for almost three months. Council was told by staff that Council had to hurry to get something on the books because of the law. Vice Mayor Rodriguez said he does not support tabling this for another month.

Councilmember Curtis asked Mr. Cooper would the city be protected if an applicant was denied issuance of a conditional use permit based on the 300 foot perimeter around schools.

Mr. Cooper stated that the city is treading on uncharted territory. He cannot say with any certainty that there would not be any liability. This law was just put on the books by the voters in the state. He said attorneys for cities and towns have a 'chat line' through the League of Arizona Cities and Towns where the ordinance was vetted. He did not see anything where attorneys raised the issue of what impact this law would have on a drug free school zone. Mr. Cooper told the Council that cities will not be able to trump state law whatever.

Councilmember Snyder wanted to know what would be the appeal process for applicants if applicants meets the separation criteria, but Council denies one and approves the other based on proximity to a church, school or residential neighborhood.

Mr. Krauss said the Council is going to have to have a good reason to approve one and deny the other if they both meet the criteria. He said it has to be something that is finite and concrete. Council cannot deny without giving a reason. Mr. Krauss said it is better to have good criteria and apply that; and maybe increase the criteria on a case by case basis. He said this would put the city in a safer legal position.

At this time, Mayor Powell allowed the public to speak on the issue.

Mr. Jim Harr conveyed that based on tonight's discussion he suggests that the Council leave the ordinance the way it currently stands; do not change it. This way the Council will not be put in the position of denying an applicant and approving another. Mr. Harr said Council has been presented with so many variables and questions that he would be hesitant to change what is already on the books.

Mr. Conrad Tolson agreed with Mr. Harr's comment.

Pastor Ken Blondeaux reiterated his opposition to the proposed separations between marijuana facilities and the schools, churches and residential. He asked the Council the reconsider their position on this item.

Mayor Powell called for a motion to table.

Motion by Councilmember Garcia, seconded by Councilmember Guanajuato Rodriguez to table Council action on Ordinance No. 21-904 until city staff review the Arizona Revised Statute pertaining to drug free school zones, passed 5 to 1 by roll call vote.

Yea: Councilmember Curtis; Councilmember Snyder; Mayor Powell;
Councilmember Garcia; Councilmember Guanajuato Rodriguez

No: Vice Mayor Rodriguez

IX. EXECUTIVE SESSION

No executive session requested by the Council or staff.

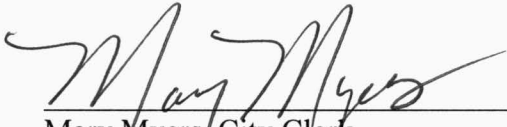
X. ADJOURNMENT

There being no further business, Mayor Powell adjourned the meeting at approximately 7:29 p.m.



Micah Powell, Mayor

ATTEST:



Mary Myers, City Clerk